

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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TOU XIONG,

Plaintiff,

v.

Case No. 21-C-0093

ANDREW SAUL, Commissioner of  
Social Security,

Defendant.

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**ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS**

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Plaintiff has filed a complaint seeking review of the decision of the Commissioner of Social Security as well as a motion for leave to proceed *in forma pauperis*, pursuant to 28 U.S.C. § 1915 which was denied because based on the information provided, it appeared that Plaintiff's family had monthly disposable income of more than \$1,600. Yet, counsel claimed Plaintiff was unable to pay a \$402.00 filing fee. Plaintiff was given 21 days to file an amended motion. *See* Dkt. 5. Plaintiff has now filed an amended motion, providing additional detail, and a letter requesting the motion be considered timely filed, explaining his office had new staff hired and the deadline was inadvertently missed.

An indigent plaintiff may commence a federal court action, without paying required costs and fees, upon submission of an affidavit asserting inability "to pay such fees or give security therefor" and stating "the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1). Plaintiff has now filed an amended affidavit of indigence which reflects \$500 per month in disposable income. Upon the Court's review, it appears there is a calculation error which would decrease the disposable income to \$300.00 per

month. Some of the figures appear inflated (i.e. \$200 per month in cleaning supplies, \$200 per month for clothing and \$360.00 per month in fuel (approximately 144 gallons of fuel per month with only his spouse working and amid a pandemic where travel is limited). Despite these questionable figures, the Court will grant Plaintiff's motion.

The question remains why the required information was not provided in the original affidavit. This is not the first time the Court has denied a motion to proceed *in forma pauperis* by one of counsel's clients based on excessive income shown in his own filings. Counsel is cautioned to carefully review future submissions to the Court in all cases as Plaintiffs do "declare under penalty of perjury that the foregoing is true and correct" and there must be some basis upon which the Court can conclude that parties filing motions to proceed *in forma pauperis* are truly indigent. It is counsel's duty to make clear and *complete* representations to the Court.

Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's request to proceed *in forma pauperis* is **GRANTED**.

**IT IS FURTHER ORDERED** that the clerk shall serve a copy of the complaint and this order on the Commissioner of Social Security.

Dated at Green Bay, Wisconsin this 25th day of February, 2021.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge